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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE JOHN W. HOLCOMB, U.S. DISTRICT JUDGE

ENTROPIC COMMUNICATIONS, LLC,	)	
	)	Case No.
Plaintiff,	)	2:22-cv-07775-JWH-JEM
	)	Related Cases:
vs.	)	2:23-cv-01043-JWH-KES
	)	2:23-cv-01049-JWH-KES
DISH NETWORK CORPORATION, et al.,	)	2:23-cv-01048-JWH-KES
	)	2:23-cv-01050-JWH-KES
Defendants.	)	2:23-cv-01047-JWH-KES
	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
ORDER TO SHOW CAUSE RE CONSOLIDATION  
FRIDAY, APRIL 21, 2023  
8:59 A.M.  
SANTA ANA, CALIFORNIA

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1                   **SANTA ANA, CALIFORNIA; FRIDAY, APRIL 21, 2023**

2                   **8:59 A.M.**

3                   - - -

08:59AM 5                   THE COURTROOM DEPUTY:   Calling Entropic  
6                   Communications, LLC vs. DISH Network Corporation, et al., vs.  
7                   Comcast Corporation, et al., vs. Cox Communications, Inc.,  
8                   et al., vs. DIRECTV, LLC, et al.

9                   Calling Item Number 1, Case Number  
09:00AM 10                  LACV-23-01047-JWH.

11                  Calling Case Number LACV-23-01048-JWH.

12                  Calling Case Number LACV-23-1043-JWH.

13                  Calling Case Number LACV-23-1050-JWH.

14                  Calling Case Number LACV-23-01049-JWH.

09:00AM 15                  Calling Case Number LACV-22-07775-JWH.

16                  Starting with plaintiffs, state your appearances for  
17                  the record.

18                  THE COURT:   I'm sorry, Madam Clerk.   Did we get  
19                  22-7959?   Oh, that's consolidated with 7775.   That's fine.

09:01AM 20                  Sorry to interrupt.

21                  Go ahead, Counsel, state your appearances.

22                  MR. SHIMOTA:   James Shimota of K&L Gates, appearing  
23                  on behalf of all Plaintiff Entropic.

24                  MS. GOODRICH:   Good morning, Your Honor.   Christina  
09:01AM 25                  Goodrich, also of K&L Gates, on behalf of plaintiff.

1 THE COURT: All right. Mr. Shimota and  
2 Ms. Goodrich, good morning.

3 MR. SHIMOTA: Good morning, Your Honor. Thank you.

4 MS. ISAACSON: Good morning, Your Honor. April  
09:01AM 5 Isaacson on behalf of Cox.

6 THE COURT: Okay. Hold on one second. Let me make  
7 sure my score sheet is updated here.

8 Ms. Isaacson.

9 MS. ISAACSON: Yes.

09:01AM 10 THE COURT: Okay. Good morning, Ms. Isaacson.

11 MR. PADMANABHAN: Good morning, Your Honor.  
12 Krishnan Padmanabhan on behalf of the Comcast defendants.

13 THE COURT: Okay. Hold on one second. Help me with  
14 your pronunciation again.

09:02AM 15 MR. PADMANABHAN: Padmanabhan.

16 THE COURT: Mr. Padmanabhan?

17 MR. PADMANABHAN: That's perfect.

18 THE COURT: Good morning. Forgive me if I  
19 mispronounce your name. I'm trying to get it right.

09:02AM 20 MR. PADMANABHAN: No, that's great.

21 MS. RAGHAVAN: Saranya Raghavan, also on behalf of  
22 Comcast.

23 THE COURT: Again, forgive me if I mispronounce your  
24 name. Welcome and good morning.

09:02AM 25 MR. LO: Good morning, Your Honor. Jason Lo,

1 Gibson, Dunn & Crutcher, on behalf of DIRECTV and AT&T.

2 THE COURT: Okay. Mr. Lo?

3 MR. LO: Yes.

4 THE COURT: Good morning, Mr. Lo.

09:02AM 5 MR. LO: Good morning.

6 MS. TESSAR: Good morning, Your Honor Amanda Tessar  
7 from Perkins Coie, on behalf of the DISH defendants in the 2022  
8 case.

9 THE COURT: Got it. Ms. Tessar, good morning to  
09:02AM 10 you.

11 MR. MARCHESE: Chris Marchese from Fish &  
12 Richardson, on behalf of the DISH defendants.

13 THE COURT: Mr. -- hold on one second. Oh,  
14 Mr. Marchese. Got you.

09:03AM 15 MR. MARCHESE: I have another tricky name to  
16 pronounce.

17 THE COURT: Well, I've got a lot of -- there are  
18 seven cases. So Mr. Marchese, good morning.

19 MR. MARCHESE: Thank you, Your Honor.

09:03AM 20 MR. SHARTZER: Good morning, Your Honor. Adam  
21 Shartzer of Fish & Richardson, also on behalf of the DISH  
22 entities in the 2023 case.

23 THE COURT: And Mr. Shartzer, good morning to you.

24 Okay. Counsel, thank you all for being here on this  
09:03AM 25 consolidated hearing. We had a number of things to take up and

1 discuss. Let's start with consolidation.

2 Here's the way I see these seven cases, and please  
3 correct me if anybody disagrees. I see three groups of cases.  
4 The first group I've already consolidated: 22-7775 against  
09:04AM 5 DIRECTV, and 7959 against DISH. Those were consolidated into  
6 the lower numbered case. And, in fact, we have a case  
7 schedule, at least for the first piece of the case, culminating  
8 in a Markman hearing currently set for, I believe, July 11 at  
9 10:00 a.m.

09:04AM 10 Ms. Goodrich, Mr. Shimota --

11 MR. SHIMOTA: That's correct, Your Honor.

12 THE COURT: -- correct so far?

13 MR. SHIMOTA: That's correct, Your Honor.

14 THE COURT: Okay. And anybody from DIRECTV or DISH,  
09:04AM 15 jump up and let me know if you disagree.

16 The way I see it, there's a second group of cases,  
17 three cases: The 1043, 1047, and 1048, against DISH, Cox  
18 Communications and Comcast. I know there are a number of  
19 defendants. I'm grouping them into those names. I think you  
09:05AM 20 understand what I mean. If you don't, please let me know.

21 In any event, I see those three grouped together,  
22 and I think that was clear from my OSC re consolidation, and I  
23 got your responses. Anyway that's the second group.

24 And then the third group, 1049 and 1050, against  
09:05AM 25 Comcast and Cox Communications respectively. And again, my OSC

1 re consolidation dealt with that.

2 Ms. Goodrich, Mr. Shimota, concur so far?

3 MR. SHIMOTA: Yes. I was just checking the numbers.  
4 That's exactly right, Your Honor.

09:05AM 5 THE COURT: Okay. Let's talk about the  
6 consolidation piece. As I said, we've already -- let me talk  
7 about Group A, Group B, and Group C. Group A we've dealt with:  
8 22-7779 and -7959.

9 Group B: 1043, 1047, 1048. I received your  
09:06AM 10 respective responses on consolidation, and it's my  
11 understanding that Entropic favors consolidation in general.  
12 Defendants do not oppose pretrial consolidation but want  
13 separate written discovery, separate depositions, and separate  
14 Markman and summary judgment briefs.

09:06AM 15 So my inclination would be to issue an order  
16 consolidating the three cases in what I'm calling Group B  
17 through the Markman -- through claim construction. But it  
18 sounds like at least defendants want some bells and whistles.

19 So what I'm inclined to do is ask you to meet and  
09:07AM 20 confer, Entropic on the one hand, and DISH, Cox Communications,  
21 and Comcast on the other hand, and come up with a proposed  
22 order that -- that incorporates what I'm calling the bells and  
23 whistles, but most importantly, from my perspective,  
24 consolidates the cases through the claim construction phase.

09:07AM 25 Now, how does everybody feel about that? Let me



1 start with Entropic.

2 MR. SHIMOTA: That would be fine, Your Honor. The  
3 parties haven't -- in those cases haven't even -- excuse me --  
4 the parties haven't even answered yet. And under the  
09:07AM 5 circumstances, we'd like to see what their defenses are. And  
6 we can try to work with them to try to put together a  
7 scheduling order where we can accommodate everyone's concerns.

8 THE COURT: I didn't realize that they had not  
9 answered. I should have checked that. There was an order --  
09:07AM 10 stipulation and order that I extended somebody's deadline to  
11 answer. I guess I was thinking that was the last one, but it  
12 was not.

13 MR. SHIMOTA: That's correct, Your Honor. I can't  
14 recall, but it's the -- they haven't answered or otherwise  
09:08AM 15 responded. That will come shortly but my point is that we can  
16 work together on this. And, you know, on the issues such as  
17 depositions, you know, we think that everyone should be  
18 courteous to the witnesses. But if there are particular  
19 concerns, for example, we'll work on that. And we think we can  
09:08AM 20 discuss it in the context of the initial scheduling conference.

21 THE COURT: Okay. Thank you. Let me hear from the  
22 respective defendant.

23 MS. ISAACSON: First, Your Honor, the date for the  
24 responsive pleading is May 8. I believe that's for all of the  
09:08AM 25 defendants at this point.

1 MR. PADMANABHAN: That's correct, Your Honor.

2 THE COURT: Okay.

3 MS. ISAACSON: And then with regard to the  
4 consolidation and working together and meeting and conferring,  
09:08AM 5 that completely makes sense from my perspective. And I let my  
6 other colleagues speak for themselves on that.

7 MR. PADMANABHAN: Sure. First off, Your Honor,  
8 meeting and conferring always sounds good. So, yeah, we're  
9 happy to meet and confer and see where we can get some  
09:09AM 10 agreement. I think what Mr. Shimota was expressing is that  
11 with respect to something like depositions, we expect to ask  
12 for particularized issues. We don't necessarily need maybe  
13 three days. With a given witness, we can find less than three  
14 days. But I don't think we'd do one day with three parties,  
09:09AM 15 for example.

16 So we can talk amongst ourselves, I think, and  
17 probably figure this out and build some flexibility into it to  
18 accommodate the different issues that we all want to try and  
19 litigate.

09:09AM 20 THE COURT: Okay.

21 MR. SHARTZER: Your Honor, Adam Shartzter on behalf  
22 of DISH.

23 DISH also agrees that it would make sense to have  
24 the parties go and meet and confer together. With respect to  
09:09AM 25 these issues, I'll take up Mr. Shimota's point that we are

1 going to have some defenses to bring at a point in this case.  
2 And it probably makes sense to see what those defenses are,  
3 understand the full scope of this case before we go off and  
4 create schedules for the case. But as for creating the order  
09:10AM 5 for consolidation includes bells and whistles, we can meet and  
6 confer on that and get to Your Honor quickly.

7 THE COURT: That sounds good.

8 Okay. Again, I did not appreciate that answers had  
9 not yet been filed. So after they are filed and you each set  
09:10AM 10 the defenses fully in this case, please meet and confer and  
11 submit to me, if you would, a proposed order pertaining to  
12 consolidation. Do your best, please, to agree on the form of  
13 that. And if you really can't, then, you know, reach out to my  
14 clerk and let us know. But I will hope and expect that you'll  
09:10AM 15 have a consensual order pertaining to consolidation.

16 And again, just through the Markman phase. We'll  
17 revisit this at that point and see what the world looks like.

18 Okay. And then Group C, my thoughts are the same.  
19 When are the answers due for the Comcast parties and the Cox  
09:11AM 20 parties and what I'm calling Group C?

21 MS. ISAACSON: Same date, May 8.

22 MR. PADMANABHAN: Yes, Your Honor. We've managed to  
23 at least align ourselves on one thing, and that is the date on  
24 which we will respond.

09:11AM 25 THE COURT: Well, that's good.

1 Yes, Mr. Shimota.

2 MR. SHIMOTA: I was standing up just to address this  
3 issue. I would say that I think my guess, unless you disagree,  
4 is that we would probably adopt a similar procedure for -- the  
09:11AM 5 first group of cases I would call the MOCA cases. And these  
6 are the -- we call them the nonstandard essential cases.

7 THE COURT: Slow down. What do you call -- what do  
8 you call Group A?

9 MR. SHIMOTA: Group A would be the MOCA cases. It's  
09:12AM 10 the multimedia -- oh, excuse me. That's not the other case.  
11 I'm sorry, the Group B cases. I would call Group A satellite  
12 nonstandard essential.

13 THE COURT: Satellite nonstandard essential.

14 MR. SHIMOTA: Correct.

09:12AM 15 THE COURT: Could you get a longer, more confusing  
16 title?

17 MR. SHIMOTA: If you gave me time. We're lawyers;  
18 right? I could come up with a lot of words.

19 THE COURT: And then what do you call Group B,  
09:12AM 20 please?

21 MR. SHIMOTA: MOCA. That's simple.

22 THE COURT: Like the chocolate?

23 MR. SHIMOTA: I think that's probably what they were  
24 thinking of, but it's M-O-C-A. It's an acronym for the  
09:12AM 25 multimedia over coaxial cable lines.

1 THE COURT: Okay. Madam Court Reporter, did you get  
2 all that?

3 THE REPORTER: I did.

4 THE COURT: So MOCA, Group B.

09:12AM 5 And Group C, what do you call it?

6 MR. SHIMOTA: So we'll call it cable NONSEP or cable  
7 nonstandard essential patents.

8 THE COURT: Cable non -- did you say "non sat"?

9 MR. SHIMOTA: NONSEP. Nonstandard essential patent.

09:13AM 10 I was trying to abbreviate there.

11 MR. PADMANABHAN: Your Honor, if I might. I don't  
12 want to impose on Mr. Shimota's naming conventions. But we're  
13 probably going to have some disputes about standard  
14 essentiality. So why don't we just call it the "cable case,"  
09:13AM 15 if that's okay.

16 MR. SHIMOTA: Well, I just called it MOCA, but  
17 that's what we call it.

18 THE COURT: Okay. C, cable; B, MOCA; A, satellite?

19 MR. SHIMOTA: Yeah. That's right. That's fair  
09:13AM 20 enough.

21 THE COURT: Let's go with that.

22 MR. PADMANABHAN: Thank you, Your Honor.

23 THE COURT: Anybody disagree strongly?

24 Okay. Thank you very much.

09:13AM 25 So I think I said it. But again, in the cable cases

1 what I originally was thinking of is Group C. Please, also,  
2 after defendants file their respective answers, meet and confer  
3 and see if you can come up with a proposed order to consolidate  
4 those two through the Markman process.

09:13AM 5 Okay. I see everybody nodding. Good.

6 So that's step -- that's the first thing on my  
7 agenda.

8 There was an issue about reduction in number of  
9 asserted claims. So again, my -- what I would -- as opposed to  
09:14AM 10 decide this now, what I prefer that you do, after the answers  
11 are filed, is meet and confer and see if you can come up with a  
12 process for doing that. If you cannot, then if some defendant  
13 wants to file a motion, then I'll certainly consider that. But  
14 do your best to arrive at something by consent that makes sense  
09:14AM 15 for everybody. Because if you ask me to impose something on  
16 you, it may not be the -- it may be a drastically suboptimal  
17 solution.

18 All right. Special master. I received the --  
19 forget what you called it. I think it was in the satellite  
09:14AM 20 cases -- request for guidance on scope of discovery.

21 That was in the satellite cases, right, Group A?

22 MS. TESSAR: Yes. Are you talking about the request  
23 for clarification?

24 THE COURT: Yes.

09:15AM 25 MS. TESSAR: I think at this point, it's largely

1 moot.

2 THE COURT: Okay. Well, I love to hear that. Tell  
3 me more about why it's moot, please.

4 MS. TESSAR: Yes. So we had a few weeks of fairly  
09:15AM 5 contentious discussion about depositions and when they should  
6 happen. It's tied up in some document production issues. Both  
7 parties have made some further productions. We have agreed  
8 that we'll start scheduling technical depositions. We don't  
9 agree, but my understanding is that Entropic is no longer  
09:15AM 10 insisting that all discovery has to be completed before the  
11 Markman. I think that's unrealistic for the size and scope of  
12 this case. But we're going to start getting those depositions  
13 scheduled.

14 THE COURT: Okay. Mr. Shimota?

09:15AM 15 MR. SHIMOTA: May I speak, Your Honor? It was  
16 never -- just to be clear, we never insisted that all discovery  
17 needed to be completed by Markman. We just meant we'd like to  
18 take discovery expeditiously. We'd like to get at least one  
19 deposition scheduled.

09:16AM 20 I think we'll have a dispute as to whether or not we  
21 can take depositions concerning financial issues in the case,  
22 but very timely a point, we're going to be discussing a special  
23 master now. And it sounds like if we can't resolve that, I  
24 guess that's something that could potentially be a first issue  
09:16AM 25 for him or her.

1 THE COURT: I think that's right. I liked the very  
2 beginning of that, which was this issue is moot. But to the  
3 extent that it's not, I don't think it's something for me to  
4 decide today in any event; correct?

09:16AM 5 MS. TESSAR: Yeah, I don't think we need anything  
6 else from Your Honor.

7 THE COURT: Okay. Thank you.

8 Let's turn to the special master issue. It didn't  
9 seem like anybody strongly opposed that notion. There were  
09:16AM 10 some proposals for particular individuals. And as I'm sure you  
11 all know, Rule 53 calls upon me to obtain your input on special  
12 masters on the identity.

13 David Keyzer, is he based in Texas?

14 MR. SHIMOTA: I believe he's here in California.

09:17AM 15 MS. ISAACSON: Not anymore. I believe he's in  
16 Sacramento.

17 THE COURT: So he's not the person I was thinking  
18 of. I have heard his name. I confess, I did not look him up  
19 and research him.

09:17AM 20 MS. ISAACSON: He used to be in Texas, which is  
21 maybe why you're thinking about him. He used to clerk for  
22 Folsom and did tech advisory work for Judge Folsom and some of  
23 the other ED Texas judges.

24 THE COURT: Then he probably is the person I'm  
09:17AM 25 thinking of. Judge Carter pretty regularly appoints him.



1 MS. ISAACSON: He does indeed.

2 THE COURT: Okay. This is the person I'm thinking  
3 of. I know him. Okay. I could tell you I think highly of  
4 him. So that's -- that was plaintiff's suggestion.

09:17AM 5 MR. SHIMOTA: Yes, Your Honor.

6 THE COURT: Then DIRECTV, I think, suggested  
7 Judge -- retired Judge Segal or retired Judge Laporte. I know  
8 Judge Segal well. I know of Judge Laporte, but I haven't used  
9 her as a special master or appointed her as special master but  
09:18AM 10 think highly of her.

11 Were there other candidates that anybody kicked  
12 around?

13 MS. ISAACSON: We met with plaintiff's counsel just  
14 before you came in, Your Honor. And for Cox, at least I can  
09:18AM 15 speak for our client, that we think very highly of Judge Keyzer  
16 as well.

17 THE COURT: Am I mispronouncing --

18 MS. ISAACSON: No. I think it's Keyzer. He says it  
19 "Keyzer." But I think very highly of him as a special master  
09:18AM 20 candidate and agree with plaintiff with that recommendation.

21 THE COURT: So that's Cox. And --

22 MS. ISAACSON: Yes, Your Honor.

23 THE COURT: Cox and plaintiff like David Keyzer.

24 MR. PADMANABHAN: Comcast can also agree to  
09:18AM 25 Mr. Keyzer.

1 THE COURT: Comcast. Okay. DISH and DIRECTV?

2 MR. SHARTZER: For DISH, in the '23 case, DISH would  
3 consent to David Keyzer as well.

4 THE COURT: Okay. DISH in the satellite cases.

09:19AM 5 MS. TESSAR: We'll consent as well, Your Honor.

6 MR. LO: If possible, Your Honor, we'd like to do a  
7 little bit more diligence on Mr. Keyzer. I have not used him  
8 before. So we're running the traps with the client and my  
9 colleagues. But we -- obviously we have suggested

09:19AM 10 Judge Laporte and Judge Segal as well.

11 THE COURT: Okay. Well, it looks like there's close  
12 to -- close to consent to Mr. Keyzer. Again, why don't you all  
13 meet and confer. And this is on behalf of DIRECTV; correct?

14 MR. LO: This is on behalf of DIRECTV.

09:19AM 15 And I'll pose the question -- I suspect I know the  
16 answer -- is it Your Honor's preference that we use the same  
17 master in all of the cases?

18 THE COURT: It is, yes. That was my thought. I  
19 think it would be inefficient to have somebody different in one  
09:20AM 20 of the groups of cases.

21 MR. LO: All right. Understood, Your Honor.

22 THE COURT: That having been said, if you have  
23 objection to Mr. Keyzer, you should raise it and, you know,  
24 I'll take a look at it. What I would prefer again is that all  
09:20AM 25 parties coalesce and agree on the identity of a special master.

1 Now, has anybody contacted Mr. Keyzer to make sure  
2 he doesn't have any conflicts? Would this come as a surprise  
3 and shock to him to learn that his name was being bandied about  
4 here?

09:20AM 5 MR. PADMANABHAN: From the defendant's perspective,  
6 the first we saw the name was when we got plaintiff's exchange.  
7 So I think I can speak on behalf of all the defendants, we have  
8 not contacted Mr. Keyzer.

9 MR. SHIMOTA: We have not reached out to him yet.  
09:20AM 10 We just suggested him as a possibility, that we've been  
11 discussing this. Obviously that would be an important step to  
12 make sure of that as well.

13 THE COURT: So I'm going to foist this back on the  
14 parties collectively.

09:21AM 15 Please -- DIRECTV, please consider whether you'll  
16 consent to Mr. Keyzer. I'm not twisting your arm. If you've  
17 got some reason not to, that's fine. But in any event, all of  
18 you meet and confer. If it is Mr. Keyzer or if it's somebody  
19 else, obviously contact him or her, make sure that person  
09:21AM 20 obviously doesn't have a conflict, and we'll consent to the  
21 appointment. And preferably then provide to me a proposed  
22 order appointing the special master.

23 If you want to look at the form of order that I  
24 like, *FIGS* case -- I appointed retired Judge Segal as a special  
09:22AM 25 master in a case I had, *SPI v. FIGS*. *FIGS*, the apparel

1 company. And if you want the case number, I'll have that to  
2 you momentarily. We'll come back to that. *FIGS* -- you can  
3 look at a case -- well, look at that one as a -- as an example  
4 of what I've used in the past.

09:22AM 5 MR. PADMANABHAN: Your Honor, I think we'll find it  
6 on PACER. That shouldn't be a problem.

7 THE COURT: 19-2286. 19-2286.

8 So again, hopefully you'll present to me a  
9 stipulation and a proposed order that I would enter in all  
09:22AM 10 three cases after -- well, before or after consolidating. I  
11 don't know that it matters. Good.

12 And again, if it's not Mr. Keyzer, that's fine. If  
13 you've got somebody else in mind, again, see if you can  
14 coalesce around him or her and submit that. And if it's okay  
09:23AM 15 with me, then I'll probably approve that.

16 That may run through everything I had on my agenda.  
17 It made it easier with the request for guidance hopefully  
18 mooted. So tell me what else you all would like to discuss  
19 after having traveled all this way -- which I appreciate.

09:23AM 20 MS. TESSAR: For DISH, we had one other thing that  
21 we wanted to raise to get the Court's guidance on. You may  
22 have noticed that Entropic filed earlier this week amended  
23 Rule 7.1-1 statements. And they did that at our request  
24 because the rules in this district require every party to  
09:24AM 25 disclose anyone who has a pecuniary interest in the outcome of

1 the case.

2 In their disclosures, their updated disclosures,  
3 they identify Fortress Investment Group as a company that acts  
4 as an investment advisor to investment funds but have an  
09:24AM 5 interest in the outcome of this case, but they didn't identify  
6 the funds. We've asked them to supplement to include that  
7 information, and they have refused and said they're not  
8 required to.

9 We think the rule is pretty clear here, and we'd  
09:24AM 10 just like the Court's guidance on how to proceed because, you  
11 know, our concern obviously is if there's investors or  
12 investment funds out there that have a pecuniary interest,  
13 we're all entitled to know who those are, and particularly the  
14 Court and Mr. Keyzer is going to need to know later and for  
09:24AM 15 purposes of the jury as well.

16 THE COURT: Is this the issue that Judge Connolly  
17 has been facing and dealing with in Delaware?

18 MS. TESSAR: It's precisely the issue. And one of  
19 the other Fortress affiliates, when faced with that rule,  
09:25AM 20 decided to drop their cases rather than comply and identify the  
21 interested investors.

22 THE COURT: You wouldn't want that to happen.

23 MS. TESSAR: I mean, it would be a tragedy. But we  
24 do very much want to know who's behind this, and we think the  
09:25AM 25 Court needs to know that information, and that's clearly what's

1 required by the Local Rules.

2 THE COURT: Okay. Mr. Shimota, do you want to  
3 respond?

4 MR. SHIMOTA: I do.

09:25AM 5 So, you know, Rule 71 is concerning conflicts of  
6 interest by you, Your Honor. You know, so -- and you know who  
7 the parties are in this case. We updated our disclosure to  
8 identify that Fortress is the parent of Entropic, the plaintiff  
9 in this lawsuit.

09:25AM 10 What DISH is talking about is what they want and  
11 it's information that we simply don't have actually. It's who  
12 are the investors in Fortress? Who were the pension funds?  
13 Who were the teachers' retirement funds who were the -- you  
14 know, the teachers' retirement funds who put money into  
09:26AM 15 Fortress? And I don't know of any case in the land which would  
16 suggest that because of that, information like that, that you  
17 would need to recuse yourself. But, you know, we feel like  
18 we've complied with the rule and provided you information which  
19 is sufficient for you to make a determination.

09:26AM 20 I'm not going to ask you about your personal  
21 financial holdings for you to make a determination as to  
22 whether or not, you know, there's need -- you need more. But I  
23 don't -- I simply don't know who is invested in Fortress,  
24 right? They're not my client in this matter. And so we've  
09:26AM 25 provided what we can in this matter. And to the extent there's

1 more, we'll obviously do what we can.

2 But, you know, that's -- and I just would note as  
3 well -- I mean, I think that Rule 71, there's reasonableness to  
4 it, right? DIRECTV is owned by a private equity fund, for  
09:26AM 5 example. They've identified that private equity fund. They  
6 haven't taken a step in this matter to identify all the  
7 investors in that private equity fund. What they've done  
8 instead is to provide the level of reasonable information which  
9 is necessary for you to be able to determine whether or not you  
09:27AM 10 have a conflict of interest in this matter.

11 I mean, the only case I'm aware of is the  
12 *Cisco/Centripetal Networks* case, and that is one in which the  
13 judge's wife held some shares in Cisco, direct owner. What  
14 DISH is talking about is going steps and steps in the chain of  
09:27AM 15 investors that we don't know about for some conflict. And so  
16 it doesn't seem necessary to us. We believe we've complied.  
17 But if Your Honor thinks more is necessary, we'll do whatever  
18 we can.

19 THE COURT: So two questions. I'm having to decide  
09:27AM 20 this issue. I'm not going to decide this issue now, but you  
21 say you don't know the information about Fortress that DIRECTV  
22 apparently presently seeks. But that information is knowable;  
23 right? Fortress presumably knows?

24 MR. SHIMOTA: Right. They can solve that issue  
09:28AM 25 right now.

1 THE COURT: Who's "they"?

2 MR. SHIMOTA: DISH could. They can serve discovery.

3 THE COURT: On Fortress and ask for that information  
4 and then --

09:28AM 5 MR. SHIMOTA: If they believe it's relevant and  
6 important to the case, they can do that. But Entropic -- I  
7 can't give Your Honor something that I don't have.

8 THE COURT: And then the issue is -- and the issue  
9 in what I'm calling the Judge Connolly cases is control over  
09:28AM 10 the litigation; is that correct?

11 MS. TESSAR: I think that's part of the issue, but I  
12 don't think that's the only issue by any means. I think it's  
13 also important for the Court to understand, you know, who is  
14 benefiting from the litigation so that they can evaluate  
09:28AM 15 conflicts as Mr. Shimota identified. I'd also say the way he  
16 described the relationship with Fortress is not the same way  
17 that is described in their notice of interested parties.  
18 Rather than saying here that Fortress is the ultimate parent,  
19 it's that Fortress is the investment advisor for funds that  
09:29AM 20 control Entropic.

21 THE COURT: You're going to double-team?

22 MS. GOODRICH: If I may, Your Honor. Precisely it  
23 says:

24 "FIGS LLC and/or its wholly owned  
09:29AM 25 subsidiaries or investment advisors to private



1 investment funds that own Entropic holdings and may  
2 have an interest in the outcome of the action."

3 THE COURT: Okay. Well, as I said, I'm not going to  
4 decide this today. If DIRECTV wants -- if DISH wants this  
09:29AM 5 information, file an appropriate motion or serve discovery,  
6 whatever you deem the best way to go, and I'll -- I'll take  
7 full briefing and decide it.

8 MS. TESSAR: Okay. So just for clarity, because we  
9 did seek discovery on this and they stiffed us, to be frank,  
09:30AM 10 but I'm not envisioning that this would be a discovery motion  
11 that would go to the special master. This is instead a motion  
12 about compliance with the Local Rules.

13 THE COURT: Then file an appropriate motion. Not  
14 going to decide it today. I appreciate learning of the  
09:30AM 15 dispute.

16 MS. TESSAR: Okay.

17 THE COURT: If you can't work it out, Local  
18 Rule 7-3, then file an appropriate motion, and I'll deal with  
19 it after full briefing.

09:30AM 20 MS. TESSAR: That sounds good. Thank you for that  
21 guidance.

22 THE COURT: Thank you.

23 What else? This is a chance -- I mean you all --  
24 clients have spent a lot of money having you here, and I'm very  
09:30AM 25 happy to see you. What else can we accomplish here today ?

1 Oh, wait. There's more.

2 MS. TESSAR: There's just one other thing. I just  
3 wanted to let the Court know we are not of like mind with  
4 Entropic in terms of the format and presentation of the  
09:30AM 5 technical tutorial. So I'm not asking you to resolve that  
6 today, but we are planning to submit a joint report, hopefully  
7 in the next few days, laying out each parties' proposal on  
8 that.

9 THE COURT: Was that a part of my schedule?

09:31AM 10 MS. TESSAR: At the status conference in December, I  
11 think you told us to confer, and if we couldn't agree, to come  
12 back to you.

13 THE COURT: Okay. So you're come -- well, you're  
14 giving me a heads-up about coming back to me?

09:31AM 15 MS. TESSAR: Exactly. DISH's proposal is that we  
16 would have an in-person technical tutorial in June before you  
17 dive into the Markman briefing so that you would have that in  
18 front of you, which also has the advantage of making the day  
19 when we'll have the Markman hearing not quite so long.

09:31AM 20 Entropic, I think, wants to have the technical tutorial  
21 immediately before the Markman. I believe that's July 17.

22 THE COURT: Isn't the Markman set for July 11?

23 MR. SHIMOTA: July 11.

24 MS. TESSAR: July 11th. My apologies.

09:31AM 25 MR. SHIMOTA: Your Honor, I mean, you know, it's

1 really your preference. In my view, having a discrete  
2 technical tutorial where we tell you something, like, we sit  
3 there and have a professor come in and say "This is a  
4 satellite, and satellites send signals down," it's just -- it's  
09:32AM 5 not particularly helpful. And it's kind of divorced from the  
6 hearing. And we think it's more useful to talk about the  
7 technology in the context of the presentation in the context of  
8 the claims. But if you would like to have a separate tutorial,  
9 we don't have a problem with that. But rather our feeling is  
09:32AM 10 that it's just most effective to present everything to you at  
11 one time and to discuss the technology in the context of both  
12 the patent and -- itself and extrinsic record in the claim.  
13 But it's your preference, Your Honor.

14 THE COURT: If there's a tutorial, are you  
09:32AM 15 anticipating it be each side would spend -- would have somebody  
16 come in and talk about the technology, Mr. Shimota?

17 MR. SHIMOTA: Well, DISH would like to have live  
18 testimony. We don't think that that's necessary to have  
19 professors come in and talk about this. It's not -- but  
09:32AM 20 again --

21 THE COURT: Hold on. So your preference would be at  
22 the Markman hearing people would actually testify --

23 MR. SHIMOTA: No.

24 THE COURT: -- and take evidence?

09:33AM 25 MR. SHIMOTA: No. We submitted expert reports which

1 would be provided to Your Honor in advance of the hearing which  
2 you'll be able to review, and then we can discuss with you what  
3 the experts have said and have -- you know, and present the  
4 technology to you in the context of discussion, the particular  
09:33AM 5 claim elements in dispute.

6 I just -- if instead you want to have -- well, two  
7 things: If you want, at the hearing, to have experts come and  
8 testify live for you, we can do that. That would be fine. I  
9 just don't think that having a separate tutorial that is  
09:33AM 10 divorced from the patent claims itself, kind of the objective  
11 just talking about just the technology, what's a channel,  
12 what's frequency, is going to be that helpful in this instance,  
13 and that's why we're proposing to just have the hearing and  
14 potentially have some expert time for the discussion of the  
09:33AM 15 technology.

16 But I would simply say that whatever Your Honor  
17 thinks is most helpful, we're fine with doing. So there's not  
18 a dispute per se, it's just we think that what we're suggesting  
19 would be more effective.

09:34AM 20 MS. TESSAR: I think everyone's confirmed they are  
21 not planning live testimony at the Markman, although there will  
22 be some declarations submitted with the briefing.

23 For DISH, we do hope to have our expert who is a  
24 gentleman by the name of Dr. Paul Steffes, who used to work for  
09:34AM 25 NASA, there to present the technical tutorial. And Dr. Steffes

1 is out of the country. He has a project for the Italian Space  
2 Agency in July. So for that reason as well, we would be able  
3 to have him live to present the technical tutorial, if we can  
4 do that in June.

09:34AM 5 THE COURT: And if we did that, Mr. Shimota,  
6 Entropic would have its own person?

7 MR. SHIMOTA: Yeah, we -- our expert, Dr. Akl, would  
8 come and talk about the technology too. It's conceivable I've  
9 seen -- well, sometimes I've seen in the past for these types  
09:34AM 10 of tutorials, the parties can jointly work on, you know, a  
11 PowerPoint with talking on it type thing to present.

12 If we're going to have live witnesses, presumably it  
13 would just be a situation where each side would have their  
14 witness come in and teach Your Honor.

09:35AM 15 THE COURT: Well, if you're asking for high-level  
16 guidance, I think I would like a tech tutorial ahead of time.  
17 June-ish does sound good. And however you can agree on doing  
18 it would be fine, whether it's one person who hopefully, in an  
19 unbiased way, discusses and teaches me -- teaches us the  
09:35AM 20 technology.

21 Or, if you cannot, which is probably more likely,  
22 each of you has your own person who comes in and does that. I  
23 think that would be helpful. So if you could confer and talk  
24 about what that looks like.

09:35AM 25 I know Judge Selna does these tech tutorials on

1 Saturdays. That's -- keep that in mind. I'm not saying  
2 definitely do that, but keep that in mind. That might work.

3 MS. TESSAR: Okay. And once we've conferred, we'll  
4 submit something, and you'll give us a date that's good for  
09:36AM 5 you, and if it's a Saturday that's good for you and your staff?

6 THE COURT: And you can reach out to my -- as  
7 opposed to the formality of filing something, you can jointly  
8 reach out to my clerk, courtroom deputy about dates. That's  
9 fine. If it's purely procedural scheduling related, that works  
09:36AM 10 fine.

11 MS. TESSAR: Sounds great. Will do.

12 THE COURT: So I hope that's some guidance.

13 MS. TESSAR: Very helpful.

14 THE COURT: Good. What else can we accomplish?

09:36AM 15 MS. TESSAR: That's all for me.

16 MR. SHIMOTA: There are other issues from our side,  
17 but they're more very in-the-weeds discovery issues, which I  
18 assume you don't want to talk about today.

19 THE COURT: I appreciate heads-ups, but I'm not  
09:37AM 20 likely to decide anything like that today.

21 MR. SHIMOTA: Well, I guess, you know, DISH filed  
22 its request for clarification on discovery, and our view is  
23 that they basically asked for clarification that, in their  
24 view, that there was no discovery which should take place but  
09:37AM 25 for anything that wouldn't intrude on work towards the claim

1 construction briefing.

2 Subsequent to Your Honor's ruling on their motion to  
3 stay, they appear to have shifted gears a bit and are now  
4 willing to at least start the process of scheduling witnesses  
09:37AM 5 on technical issues, i.e., for infringement.

6 We still can't get discovery concerning financial  
7 topics, you know, the damages in the case. Could you please  
8 clarify whether discovery is opened concerning financial  
9 issues? I mean, in our view, there was no -- in Texas, at  
09:37AM 10 least, there was no limitations on discovery at all. And we  
11 had a scheduling conference, and we think it's important to the  
12 case. So if you could, if you could clarify that, Your Honor,  
13 that would be helpful.

14 MS. TESSAR: We don't dispute that discovery is open  
09:38AM 15 there. We're working towards producing documents. I think to  
16 the extent there's a dispute at all, the question is does it  
17 make sense to have a deposition of a financial witness before  
18 we produce the sales data. Obviously, that doesn't make any  
19 sense. So I think that this is one that will naturally work  
09:38AM 20 itself out and logic will prevail.

21 MR. SHIMOTA: Well, the case has been pending for a  
22 year. We would hope that we can get the sales data soon.  
23 There's certain granular data, but it seems there is a dispute.  
24 So we can meet and confer and work on that.

09:38AM 25 THE COURT: Okay. Continue working on that, please.

1 There's a proportionality doctrine that's built into Rule 26  
2 and all the discovery rules. So I'm not going to rule on what  
3 you've given me here, plus I'd rather see a special master in  
4 place who can appreciate the entire scope of the cases, all the  
09:39AM 5 cases and kind of see it from that perspective. So keep  
6 working on it.

7 MR. SHIMOTA: Okay.

8 THE COURT: If you absolutely need a decision on  
9 something, if there's a discovery -- discrete discovery dispute  
09:39AM 10 that exists, there's a process for getting that resolved. That  
11 said, I appreciate hearing the heads-up.

12 MR. SHIMOTA: Thank you, Your Honor. I have nothing  
13 else.

14 THE COURT: Okay. Anybody else? So where did you  
09:39AM 15 all come in from?

16 MS. TESSAR: I came from Denver where DISH is  
17 headquartered. I was not supposed to be here. My partner last  
18 night, who's in San Diego, got COVID. So...

19 THE COURT: Sorry to hear that.

09:40AM 20 MS. TESSAR: I came in quite late, but I'm glad to  
21 be here with you.

22 THE COURT: Glad to have you.

23 Okay. Where else?

24 MR. SHIMOTA: I'm from Chicago. If you want to have  
09:40AM 25 a tutorial on a Saturday, my mom and dad live up north of here.



1 So I'm more than happy to. But I'm from Chicago.

2 MS. ISAACSON: I only came from San Francisco. So  
3 not too far.

4 MR. PADMANABHAN: From New York, but I'm here  
09:40AM 5 regularly.

6 MS. RAGHAVAN: Chicago.

7 MR. SHARTZER: Washington, D.C.

8 MR. MARCHESE: I'm a Southern California person.  
9 San Diego.

09:40AM 10 MR. LO: I'm about as local as it gets, Los Angeles.

11 THE COURT: Thank you all for coming in from all  
12 those places. I appreciate it. I thought this might be a  
13 longer hearing. I'm sorry to bring you all in for a relatively  
14 short proceeding, but I think we got a lot accomplished, and it  
09:41AM 15 was nice for me to see you all here together.

16 Anything else?

17 Okay. Hearing nothing, have a great rest of the  
18 day, great weekend. Hopefully you can enjoy Southern  
19 California for a little while longer, those of you who are out  
09:41AM 20 of town, and I'll see you next time. Thank you.

21 THE COURTROOM DEPUTY: All rise.

22 **(Proceedings conclude at 9:41 a.m.)**

23 --oOo--

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Date: May 4, 2023

/S/ *DEBBIE HINO-SPAAN*

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